

HOUSE BILL 3500

By Hawk

AN ACT amend Tennessee Code Annotated, relative to  
enacting the "Tennessee Citizen Protection Act of  
2008".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Citizen Protection Act of 2008".

SECTION 2. The general assembly finds that illegal immigration is causing economic hardship and lawlessness in this state and that illegal immigration is encouraged when public agencies within this state provide public benefits without verifying immigration status. The general assembly further finds that when illegal immigrants have been harbored and sheltered in this state and encouraged to reside in this state through the issuance of identification cards that are issued without verifying immigration status, these practices impede and obstruct the enforcement of federal immigration law, undermine the security of our borders, and impermissibly restrict the privileges and immunities of the citizens of Tennessee. Therefore, the people of the state of Tennessee declare that it is a compelling public interest of this state to discourage illegal immigration by requiring all agencies within this state to fully cooperate with federal immigration authorities in the enforcement of federal immigration laws. The state of Tennessee also finds that other measures are necessary to ensure the integrity of various governmental programs and services.

SECTION 3.

(a) The following entities may create, publish or otherwise manufacture an identification document, identification card, or identification certificate and may possess an engraved plate or other such device for the printing of such identification; provided, the name of the issuing entity shall be clearly printed upon the face of the identification:

(1) Businesses, companies, corporations, service organizations and federal, state and local governmental agencies for employee identification which is designed to identify the bearer as an employee;

(2) Businesses, companies, corporations and service organizations for customer identification which is designed to identify the bearer as a customer or member;

(3) Federal, state and local government agencies for purposes authorized or required by law or any legitimate purpose consistent with the duties of such an agency, including, but not limited to, voter identification cards, driver licenses, nondriver identification cards, passports, birth certificates and social security cards;

(4) Any public school or state or private educational institution, to identify the bearer as an administrator, faculty member, student or employee;

(5) Any professional organization or labor union to identify the bearer as a member of the professional organization or labor union; and

(6) Businesses, companies or corporations which manufacture medical-alert identification for the wearer thereof.

(b) All identification documents as provided for in subdivision (a)(3) or (a)(4) shall be issued only to United States citizens, nationals and legal permanent resident aliens.

(c)(1) Subsection (b) shall not apply when an applicant presents, in person, valid documentary evidence of:

(A) A valid, unexpired immigrant or nonimmigrant visa status for admission into the United States;

(B) A pending or approved application for asylum in the United States;

(C) Admission into the United States in refugee status;

(D) A pending or approved application for temporary protected status in the United States;

(E) Approved deferred action status; or

(F) A pending application for adjustment of status to legal permanent residence status or conditional resident status.

(2) Upon approval, the applicant may be issued an identification document provided for in subdivision (a)(3) or (a)(4). Such identification document shall be valid only during the period of time of the authorized stay of the applicant in the United States or, if there is no definite end to the period of authorized stay, a period of one (1) year. Any identification document issued pursuant to this subsection (c) shall clearly indicate that it is temporary and shall state the date that the identification document expires. Such identification document may be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified for the identification document has been extended by the United States citizenship and immigration services or other authorized agency of the United States department of homeland security.

(d) Subsection (b) shall not apply to an identification document described in subdivision (a)(4) that is only valid for use on the campus or facility of that educational institution and includes a statement of such restricted validity clearly and conspicuously printed upon the face of the identification document.

(e) Any driver license issued to a person who is not a United States citizen, national or legal permanent resident alien for which an application has been made for renewal, duplication or reissuance shall be presumed to have been issued in accordance with subsection (c); provided that, at the time the application is made, the

driver license has not expired, or been cancelled, suspended or revoked. The requirements of subsection (c) shall apply, however, to a renewal, duplication or reissuance if the department of safety is notified by a local, state or federal government agency of information in the possession of the agency indicating a reasonable suspicion that the individual seeking such renewal, duplication or reissuance is present in the United States in violation of law. The provisions of this subsection shall not apply to United States citizens, nationals or legal permanent resident aliens.

#### SECTION 4.

(a) When a person is charged with a felony or with a second or subsequent violation of driving under the influence pursuant to § 55-10-401 and is confined, for any period, in the jail of the county or any municipality, a reasonable effort shall be made to determine the citizenship status of the person so confined, including but not limited to, reviewing documents in the possession of the prisoner.

(b) If the keeper of the jail or other officer cannot determine the lawful status of the person from the documents in the possession of the prisoner, verification shall be made within forty-eight (48) hours through a query to the Law Enforcement Support Center of the United States Department of Homeland Security or other office or agency designated for that purpose by the United States Department of Homeland Security. If it is determined that the person is not lawfully present in the United States, pursuant to the federal Immigration and Naturalization Act, compiled in 8 U.S.C. § 1101 et seq., the keeper of the jail or other officer shall notify the United States Department of Homeland Security.

(c) After an inquiry into the citizenship status of the defendant, if it is determined that the defendant is not lawfully present in the United States, when determining the amount of bail, there shall be a presumption that the defendant is at risk of flight.

## SECTION 5.

As used in Sections 6 and 7 of this act:

(1) "Public employer" means every department, agency, or instrumentality of the state or a political subdivision of the state;

(2) "Status verification system" means an electronic system operated by the federal government, through which an authorized official of an agency of the state of Tennessee or of a political subdivision therein may make an inquiry, by exercise of authority delegated pursuant to 8 U.S.C § 1373, to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by Section 7 of this act. The status verification system shall be deemed to include:

(A) The electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, P.L. 104-208, Division C, Section 403(a); 8 U.S.C., Section 1324a, and operated by the United States department of homeland security, known as the Basic Pilot Program;

(B) Any equivalent federal program designated by the United States department of homeland security or any other federal agency authorized to verify the work eligibility status of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603;

(C) Any other independent, third-party system with an equal or higher degree of reliability as the programs, systems, or processes described in this paragraph; or

(D) The Social Security Number Verification Service, or such similar online verification process implemented by the United States social security administration;

(3) "Subcontractor" means a subcontractor, contract employee, staffing agency, or any contractor regardless of its tier; and

(4) "Unauthorized alien" means an alien as defined in 8 U.S.C. § 1324a(h)(3)

#### SECTION 6.

(a) Every public employer shall register with and utilize a status verification system as described in subdivision (1)(A) or (1)(B) of Section 5 of this act to verify the federal employment authorization status of all new employees.

(b)

(1) After January 1, 2009, no public employer shall enter into a contract for the physical performance of services within this state unless the contractor registers and participates in the status verification system to verify the work eligibility status of all new employees.

(2) After January 1, 2009, no contractor or subcontractor who enters into a contract with a public employer shall enter into such a contract or subcontract in connection with the physical performance of services within this state unless the contractor or subcontractor registers and participates in the status verification system to verify information of all new employees.

(3) This subsection (b) shall not apply to any contracts entered into prior to the effective date of this section even though such contracts may involve the physical performance of services within this state after January 1, 2009.

#### SECTION 7.

(a) Except as provided in subsection (c) or where exempted by federal law, every agency or political subdivision of this state shall verify the lawful presence in the United States of any natural person fourteen (14) years of age or older who has applied for state or local public benefits, as defined in 8 U.S.C., § 1621, or for federal public

benefits, as defined in 8 U.S.C., § 1611, that is administered by an agency or a political subdivision of this state.

(b) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(c) Verification of lawful presence under this section shall not be required:

(1) For any purpose for which lawful presence in the United States is not restricted by law, ordinance, or regulation;

(2) For assistance for health care items and services that are necessary for the treatment of an emergency medical condition, as defined in 42 U.S.C. § 1396b(v)(3), of the alien involved and are not related to an organ transplant procedure;

(3) For short-term, noncash, in-kind emergency disaster relief;

(4) For public health assistance for immunizations with respect to diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease; or

(5) For programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by the United States attorney general, in the sole and unreviewable discretion of the United States attorney general after consultation with appropriate federal agencies and departments which:

(A) Deliver in-kind services at the community level, including through public or private nonprofit agencies;

(B) Do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the income or resources of the individual recipient; and

(C) Are necessary for the protection of life or safety.

(d)

(1) Verification of lawful presence in the United States by the agency or political subdivision required to make such verification shall require that the applicant execute an affidavit under penalty of perjury that:

(A) The applicant is a United States citizen; or

(B) The applicant is a qualified alien under the federal Immigration and Nationality Act and is lawfully present in the United States.

(2) The agency or political subdivision providing the state or local public benefits shall provide notary public services at no cost to the applicant.

(e) For any applicant who has executed the affidavit described in subdivision (d)(1)(b), eligibility for benefits shall be verified through the Systematic Alien Verification for Entitlements (SAVE) Program operated by the United States department of homeland security or an equivalent program designated by the United States department of homeland security. Until such eligibility verification is made, the affidavit may be presumed to be proof of lawful presence for the purposes of this section.

(f) Any person who knowingly makes a false, fictitious, or fraudulent statement of representation in an affidavit executed pursuant to subsection (d) shall be subject to criminal penalties applicable in this state for fraudulently obtaining public assistance program benefits. If the affidavit constitutes a false claim of U.S. citizenship under 18 U.S.C., § 911, a complaint shall be filed by the agency requiring the affidavit with the United States attorney general for the applicable district based upon the venue in which the affidavit was executed.

(g) Agencies or political subdivisions of this state may adopt variations to the requirements of this section which demonstrably improve the efficiency or reduce delay



in the verification process, or to provide for adjudication of unique individual circumstances where the verification procedures in this section would impose unusual hardship on a legal resident of Tennessee.

(h) It shall be unlawful for any agency or political subdivision of this state to provide any state, local, or federal benefit, as defined in 8 U.S.C., § 1621, or 8 U.S.C., § 1611, in violation of this section.

(i) Each state agency or department which administers any program of state or local public benefits shall provide an annual report to the governor, the speaker of the senate and the speaker of the house of representatives with respect to its compliance with this section. Each agency or department shall monitor the systematic alien verification for entitlements program for application verification errors and significant delays and shall provide an annual public report on such errors and significant delays and recommendations to ensure that the application of the systematic alien verification of entitlements program is not erroneously denying benefits to legal residents of Tennessee. Errors shall also be reported to the United States department of homeland security by each agency or department.

#### SECTION 8.

(a) Any person exempt from payment of all or any portion of the tax imposed pursuant to title 67, chapter 4, part 20 or 21 or receiving a credit to be applied against the tax imposed pursuant to title 67 chapter 4, part 20 or 21 that knowingly employs an illegal immigrant in this state shall no longer be eligible for such exemption or receive such credit for the tax year in which the department discovers the employment relationship. For purposes of this section, "illegal immigrant" means a person who is not authorized by federal law to be present in the United States.

(b) The department of revenue is authorized to promulgate rules and regulations necessary to effectuate the purposes of this section. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 9. An individual who is not lawfully present in the United States shall not be eligible on the basis of residence within the state for:

- (1) Any postsecondary education benefit, including, but not limited to, scholarships or financial aid; or
- (2) Resident tuition.

SECTION 10. Subject to the availability of funding, the Tennessee bureau of investigation shall establish a fraudulent documents identification (FDI) unit for the primary purpose of investigating and apprehending persons or entities that participate in the sale or distribution of fraudulent documents used for identification purposes. The unit shall additionally specialize in fraudulent identification documents created and prepared for persons who are unlawfully residing within the state of Tennessee. The bureau shall employ sufficient employees to investigate and implement an FDI unit.

SECTION 11.

(a) The Tennessee higher education commission may adopt a policy which allows a student to enroll in an institution within the University of Tennessee or Tennessee board of regents systems and allows a student to be eligible for resident tuition, if the student:

- (1) Graduated from a public or private high school in this state; and
- (2) Resided in this state with a parent or legal guardian while attending classes at a public or private high school in this state for at least two (2) years prior to graduation.

(b) To be eligible for the provisions of subsection (a), an eligible student shall:

(1) Satisfy admission standards as determined by the Tennessee higher education commission for the appropriate type of institution and have secured admission to, and enrolled in, an institution within University of Tennessee or Tennessee board of regents systems; and

(2) If the student cannot present to the institution valid documentation of United States nationality or an immigration status permitting study at a postsecondary institution:

(A) Provide to the institution a copy of a true and correct application or petition pending filed with the United States citizenship and immigration services to legalize the student's immigration status; or

(B) File an affidavit with the institution stating that the student will file an application to legalize the student's immigration status at the earliest opportunity the student is eligible to do so, but in no case later than:

(i) One (1) year after the date on which the student enrolls for study at the institution; or

(ii) If there is no formal process to permit children of parents without lawful immigration status to apply for lawful status without risk of deportation, one (1) year after the date the United States citizenship and immigration services provide such a formal process; and

(C) If the student files an affidavit pursuant to subdivision

(b)(2)(B), present to the institution a copy of a true and correct application

or petition filed with the United States citizenship and immigration services no later than:

(i) One (1) year after the date on which the student enrolls for study at the institution; or

(ii) If there is no formal process to permit children of parents without lawful immigration status to apply for lawful status without risk of deportation, one (1) year after the date the United States citizenship and immigration services provide such a formal process, which copy shall be maintained in the institution's records for that student.

(c) Any student who completes the required criteria prescribed in subsections (a) and (b) shall not be disqualified on the basis of the student's immigration status from any scholarships or financial aid provided by this state.

(d) This section shall not impose any additional conditions to maintain resident tuition status at a postsecondary educational institution within the University of Tennessee or Tennessee board of regents systems on a student who was enrolled in a degree program and first received such resident tuition status at that institution during the 2008-2009 school year or any prior year.

## SECTION 12.

(a) For purposes of this section, unless the context otherwise requires:

(1) "Employee" means any person who engages in work for compensation in money or other valuable consideration and for which a person paying the compensation for the work performed is required to file a W-2 wage and tax statement with the federal internal revenue service;

(2) "Knowingly" means having actual knowledge that a person is an unauthorized alien or having a duty imposed by law to determine the immigration status of an unauthorized alien and failing to perform that duty;

(3) "Lawful resident alien" means a person who is entitled to lawful residence in the United States pursuant to the federal Immigration and Naturalization Act;

(4) "Lawful resident verification information" means the documentation that is required by the United States department of homeland security when completing the employment eligibility verification form commonly referred to as the Form I-9;

(5) "Replace" means the employee is in or is put in a job category that requires equal skill, effort, and responsibility, and which is performed under similar working conditions as the job category held by the discharged employee; and

(6) "Unauthorized alien" means an alien as defined in 8 U.S.C. § 1324a(h)(3).

(b) There is created a civil cause of action for wrongful termination against an employer who knowingly discharges an employee working in Tennessee who is a United States citizen or permanent resident alien and hires or retains a person to replace the discharged employee who the employer knows, or reasonably should have known, is an unauthorized alien.

(c) It is an absolute bar to recover under this section if:

(1) The discharged employee was discharged for cause; or

(2) The employer requested from the unauthorized alien, received, and documented in the unauthorized alien's record, at least fourteen (14) calendar

days after commencement of employment, lawful resident verification information consistent with employer requirements under the Immigration Reform and Control Act of 1986, compiled in 8 U.S.C. § 1101 et seq., and the lawful resident verification information provided by the unauthorized alien later was determined to be false.

(d) This section does not create an employment contract for either a public or private employer.

(e) No cause of action for a violation of subsection (b) shall arise anywhere in Tennessee law but from this section. A civil cause of action under this section shall be filed in chancery court or circuit court within one (1) year from the date the employee was terminated or the date the unauthorized alien commenced employment, whichever is later.

(f) The court is authorized to issue any restraining order, injunction or other equitable relief to restrain, prevent or remedy any wrongful termination provided for in subsection (b), and may award to the prevailing plaintiff actual damages sustained by such plaintiff, together with the costs of the lawsuit, including reasonable attorneys' fees.

SECTION 13. This act shall take effect January 1, 2008, the public welfare requiring it.